80-798

File No.

Supreme Court, U. S.
FILED
NOV 17 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

WILLIAM A. McFARLAND

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION

JERRY B. CLAYTON, Esquire
CLAYTON & MYRICK
Post Office Box 929
Durham, North Carolina
27702
Telephone: (919) 688-8258
Counsel for Petitioner

DAVID B. SMITH
Assistant U.S. Attorney
Middle District of
North Carolina
Federal Courthouse
Greensboro, North Carolina
Counsel for Respondent

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

QUESTIONS PRESENTED

1. Whether the United States Government should seek redress of alleged violations of 7 U.S.C. Section 1314(a) by bringing criminal prosecution under 18 U.S.C. Section 1001.
2. Whether McFarland waived his Constitutional Right to counsel prior to signing a statement prepared by Special Agent J. B. Collins on August 31, 1977.
3. Whether, as a matter of law, the statement signed by McFarland on August 31, 1977, was freely and voluntarily made, without threats or promises, direct or indirect, or by exertion or any degree of improper influence by the United States Government.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	ii
OPINIONS BELOW	1
JURISDICTION	2
STATUTES INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THIS WRIT	6
APPENDIX	1a

TABLE OF AUTHORITIES

Miranda v. Arizona, 384, U.S. 436 (1966) 7

United States v. Gilliland, 312 U.S. 86 (1941) 6,7

United States v. Clark, 499 F.2d 802 (4th Cir. 1974) 8

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

File No.

WILLIAM A. McFARLAND

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is unreported and is printed in Appendix A hereto, infra, page 1a, The Judgment of the United States District Court for the Middle District of North Carolina is printed in Appendix A hereto, infra, page 3a.

JURISDICTION

The Judgment of the United States Court of Appeals for the Fourth Circuit, (Appendix A, infra, page 1a) was entered on September 18, 1980. The jurisdiction of the Court is invoked under 28 U.S.C. Section 1254(1).

STATUTES INVOLVED

18 U.S.C. Section 1001--Statements or entries generally. Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000.00 or imprisoned not more than five years, or both.

7 U.S.C. Section 1314(a)—Penalties—Persons liable
The marketing of any kind of tobacco in excess of the marketing quota for the farm on which the tobacco is produced shall be subject to a penalty of 75 per centum of the average market price (calculated to the nearest whole cent) for such kind of tobacco for the immediately preceding marketing year. Such penalty shall be paid by the person who acquired such tobacco from the producer but an amount equivalent to the penalty may be deducted by the buyer from the price paid to the producer in case such tobacco is marked by sale; or, if the tobacco is marketed by the producer through a warehouseman or other agent, such penalty shall

be paid by such warehouseman or agent who may deduct an amount equivalent to the penalty from the price paid to the producer: Provided, That in case any tobacco is marketed directly to any person outside the United States the penalty shall be paid and remitted by the producer. If any producer falsely identifies or fails to account for the disposition of any tobacco, an amount of tobacco equal to the normal yield of the number of acres harvested in excess of the farm-acreage allotment shall be deemed to have been marketed in excess of the marketing quota for the farm, and the penalty in respect thereof shall be paid and remitted by the producer. Tobacco carried over by the producer thereof from one marketing year to another may be marketed without payment of the penalty imposed by this section if the total amount of tobacco available for marketing from the farm in the marketing year from which the tobacco is carried over did not exceed the farm marketing quota established for the farm for such marketing year (or which would have been established if marketing quotas had been in effect for such marketing year), or if the tobacco so carried over does not exceed the normal production of that number of acres by which the harvested acreage of tobacco in the calendar year in which the marketing year begins is less than the farm-acreage allotment. Tobacco produced in a calendar year in which marketing quotas are in effect for the marketing year beginning therein shall be subject to such quotas even though it is marketed prior to the date on which such marketing year begins.

STATEMENT OF THE CASE

This case is a criminal action wherein the Petitioner, William A. McFarland, a Durham, North Carolina farmer, was charged with violating Title 18, United States Code, Section 1001, alleging that, on or about August 16, 1976 and up to or on or about November 2, 1976, he had falsely identified and marketed flue-cured tobacco through the facilities of Star Brick Warehouse in Durham, North Carolina. On January 19, 1979, McFarland filed a Motion to Suppress certain written and oral statements purportedly made by him in response to interrogation by a government agent on August 31, 1977 and subsequent dates. On February 5, 1979, an evidentuary hearing was conducted before the Honorable Hiram H. Ward, Judge presiding at the February Criminal Term of the United States District Court, on the defendant's Motion to Suppress. The Government called Special Agent J. B. Collins and the defense called William A. McFarland. The following evidence was solicited:

On August 31, 1977, Agent Collins met with McFarland at the Durham County Agricultural Stabilization and Conservation Service Office. Agent Collins identified himself to McFarland and read to McFarland a statement of his Constitutional Rights. Agent Collins testified that he did not know if McFarland read the waiver. Upon being asked to sign the waiver by Agent Collins, McFarland refused to do so and told the agent that he did not understand the implication of the thing because he had never had one read to him before and did not understand what he was talking about. The agent told McFarland that he could get an attorney, and Mr. McFarland said that he would get one. At that time, McFarland got up to leave but the agent stated to

him that he had better talk to him because he had him for 32 counts of illegally selling tobacco and that he was going to the penitentiary in Atlanta. Thereafter, the agent went over the penalties for each count, which carried five years imprisonment and a $10,000.00 fine. At the time of this interview, the defendant had been limited for some time in his physical activities because he had been the victim of two heart attacks in the past, the most recent being in that same year, 1977. McFarland sat back down after the agent's statement regarding the charges because he needed to and because he could not stand the stress and he did not feel too well at the time. Immediately thereafter, the agent began to question McFarland about the situation concerning the marketing of tobacco. The agent began talking about a hypothetical situation in regards to illegally marketing tobacco and asked McFarland if it could be done in this manner and McFarland told him that he guessed it could. The agent produced a bundle of tobacco bills and began questioning McFarland about them. The agent also produced seveal checks upon which McFarland was listed as payee and questioned McFarland about these. McFarland stated that he did not know about the tobacco bills because he did not sell any tobacco and that he had not cashed the checks in question or received any of the proceeds from the checks in question. The agent then asked McFarland for a sample of his handwriting in order to check the endorsement of the checks. The agent indicated to McFarland that he could get his signature if McFarland did not want to give a sample. McFarland indicated that his signature was all over the ASCA Office. Thereupon, the agent got up and went into the outer office. He returned with a typewritten statement which McFarland did not read and which the agent did not read to McFarland. The agent informed McFarland that he could

obtain a handwriting sample whether McFarland volunteered one or not and also that McFarland could not interfere with a government investigation. McFarland signed the typewritten statement in order to give a handwriting sample and because he was disgusted and wanted to leave.

McFarland further testified that at the August 31, 1977 meeting, Agent J. B. Collins led him to believe that he should cooperate with the investigation because Collins did not want him, McFarland, but that Collins hated warehouses and warehousemen and wanted to "hang" the warehouse. Collins also stated that if McFarland cooperated, he would help McFarland with the United States District Attorney, Mr. White.

McFarland further stated in the August 31, meeting he considered himself threatened by Agent Collins because, when McFarland got up to leave, Agent Collins told him that he was going to send him to the penitentiary in Atlanta.

REASONS FOR GRANTING THIS WRIT

The first question presented for review deals with the choice of remedies by the United States Government in seeking redress of alleged violations of the tobacco marketing program. The United States Congress and the United States Department of Agriculture have set up an extensive and specific means of enforcing the tobacco marketing quota system, complete with built-in specific penalties. However, in this case, the United States Government has chosen to proceed under the broader statute, 18 U.S.C. 1001. The United States Court of Appeals for the Fourth Circuit, in affirming conviction under this statute, cited the United States Supreme Court of *United States v. Gilliland,* 312

U.S. 86 (1941), which involved a prosecution under Section 35 of the Criminal Code, the predecessor of Section 1001. In that case, the defendant had argued that the enactment of a subsequent statute specifically prohibiting the alleged violation involved had acted as a repeal of Section 35 as that section applied to the specific violation covered in the subsequent statute. In essence, the defendant in *Gilliland* was arguing repeal by implication, and the Court rejected this argument. McFarland is not arguing repeal by implication; rather, he is merely requesting the Court to determine the Congressional intent behind two overlapping statutes. Since Congress has seen fit to allow for specific prohibitions and specific penalties in tobacco marketing violations, it is reasonable to infer that Congress did not intend for the Government to seek redress of alleged violations of the tobacco marketing quota system by bringing criminal prosecutions under the all-encompassing statute 18 U.S.C. Section 1001. In that this is an important question of federal law which has not been, but should be, settled by the United States Supreme Court, McFarland respectfully requests the Court to review this matter.

An additional ground for review involved the circumstances surrounding the interrogation of McFarland by Special Agent J. B. Collins on August 31, 1977. The totality of those circumstances indicate that there is no evidence with which the trial court could conclude, as a matter of law, that McFarland had voluntarily waived his right to counsel prior to the interrogation. Those circumstances, as set forth in the statement of the case, supra, were dealt with by this Court in *Miranda v. Arizona,* 384 U.S. 436 (1966): "If the individual states that he wants an attorney, the interrogation must cease until an attorney is present. At that time, the individual must have an opportunity to confer with the

attorney and to have him present during any subsequent questioning. . . If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retain or appointed counsel." 384 U.S. 436, 475-76 (1966). Clearly, McFarland indicated a desire to retain counsel, whereupon the interrogator immediately proceeded to question McFarland. Therefore, the Court of Appeals, in affirming the trial court's ruling, has decided a federal question in a way in conflict with the applicable decisions of this Court.

Furthermore, the circumstances in the case of *United States v. Clark,* 499 F.2d 802 (4th Cir. 1974) are very similar to this case. In *Clark,* the defendant refused to sign a waiver of rights form handed to him by an FBI agent, and the defendant stated that he wished to consult with an attorney. Four hours later, the agent returned and initiated an interrogation although the defendant had not yet conferred with an attorney. The Court, citing *Miranda,* reversed the conviction, stating: "Evidence that an accused has previously asserted his right to confer with counsel is a factor which weighs heavily against a finding that a subsequent uncounseled confession is voluntary." 499 F.2d at 807. Therefore, the Court of Appeals, in affirming the trail court's ruling that statements have been freely and voluntarily made, had rendered a decision in conflict with an earlier decision of that same Court of Appeals on the same matter. McFarland respectfully submits that this conflict between

the decisions of the United States Court of Appeals for the Fourth Circuit, along with the conflict with earlier decisions of this Court, provide sufficient and compelling grounds for this Court to review this matter.

Respectfully Submitted,

CLAYTON & MYRICK

BY: /s/ Jerry B. Clayton
Jerry B. Clayton
109 North Church Street
Post Office Box 929
Durham, North Carolina 27702
Telephone: (919) 688-8258
Attorney for Petitioner

APPENDIX A

PER CURIAM:

A grand jury for the Middle District of North Carolina returned an indictment charging William A. McFarland, along with two other individuals, with a violation of Title 18 U.S.C. §1001 by making false statements to the Department of Agriculture of the United States with respect to the the identification and marketing of flue-curred tobacco. The case was tried to a jury which returned a verdict of guilty against McFarland. The judgment of conviction was entered on the jury's verdict and McFarland has appealed.

Initially, McFarland contends that the acts charged in the indictment are specifically prohibited by Title 7 U.S.C. §1314(a), and it is reasonable to assume that Congress intended this should be the Government's avenue of enforcement of the tobacco marketing quota system. It is true that under the Agricultural Adjustment Act Congress and the Department of Agriculture have set up an extensive administrative procedure for enforcing the quota system, but it does not follow that this administrative procedure supercedes section 1001 or precludes the Government from following the latter route if it is so disposed. The question of the Government's right to opt for prosecution under section 1001 was settled in *United States v. Gilliland,* 312 U.S. 86 (1941), which involved a prosecution under section 35 of the Criminal Code, the predecessor of section 1001. The false statements in that case were reflected in reports to the Department of the Interior in its administration of the "Hot Oil" Act of February 22, 1935, 15 U.S.C. §715, and the defendant contended that this Act was designed to cover the

entire subject of "hot oil" and operated as a repeal of all other provisions in that area. The Court rejected this contention with the following observations:

> Similarly lacking in merit is the contention that the Act of February 22, 1935, operated to repeal § 35 as amended in 1934, so far as the latter applied to affidavits, documents, etc., presented in relation to "hot oil." There was no express repeal and there was no repugnancy in the subject matter of the two statutes which would justify an implication of repeal. The Act of 1934, with its provisions as to false and fraudulent papers, has its place as a fitting complement to the Act of 1935 as well as to other statutes under which, in connection with the authorized action of governmental departments or agencies, the presentation of affidavits, documents, etc., is required. There is no indication of an intent to make the Act of 1935 a substitute for any part of the provision in § 35.

312 U.S., *supra,* at 95-96. In our opinion an indictment under section 1001 was appropriate in the present case even though the false statements also contravened the statute and administrative regulations of the Agriculture Adjustment Act.

McFarland also contends that a statement given by him to an agent of the Department of Agriculture was obtained in violation of his constitutional rights and should not have been admitted in evidence. The district court conducted a full evidentiary hearing upon a motion to suppress the statement, and concluded that McFarland had been fully advised of his constitutional rights and that the statement was freely and voluntarily made. Based upon our review of the record, the evidence amply supported these conclusions of the district judge, and the motion to suppress was properly denied.

Discerning no error of fact or law, the judgment of conviction is affirmed.

AFFIRMED.

THE COURT: It is concluded and found by a preponderance of the evidence that the statements made by the Defendant McFarland on August 31, 1977, were made freely and voluntarily by him, with full knowledge of the nature of the statement and without fear or coercion either physical or psychological or promise of reward, threat, injury, or diminution of rights, and were also made after the defendant had been fully advised of his rights pursuant to the mandate of Miranda versus Arizona.

It is further found by a preponderance of the evidence that the defendant's physical and mental faculties at the time were not appreciably affected by any alcoholic beverage or drug and that he understood the warnings given by Agent Collins and the import and effect of the statements made by McFarland to Agent Collins.

The Court will of course instruct the jury as to how they can consider this evidence and likewise let them pass upon the question of whether the statements were made freely and voluntarily and uninfluenced by reward or threat of injury.

With reference to the September 1st unsigned statement, I do not think that is admissible in evidence. The Witness Collins testified that he used such paper writing made by him to refresh his recollection as to what was said or not said on that particular occasion.

I am also finding that in both instances the interrogations were non-custodial.

All right. I believe that resolves everything in this case, does it not, until trial time?

MR. SMITH: I believe so, Judge.

(End of hearing.)

- - - - - - -

No. 80-798

In the Supreme Court of the United States

OCTOBER TERM, 1980

WILLIAM A. MCFARLAND, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

TABLE OF AUTHORITIES

Page

Cases:

Berenyi v. *Immigration Director*, 385 U.S. 630 4

Lego v. *Twomey*, 404 U.S. 477 5

North Carolina v. *Butler*, 441 U.S. 369 5

United States v. *Batchelder*, 442 U.S. 114 3

United States v. *Gilliland*, 312 U.S. 86 2

United States v. *Reliable Transfer Co.*, 421 U.S. 397 4

Statutes:

7 U.S.C. 1314(a) 1, 2

18 U.S.C. 1001 ..... 1, 2

In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-798

WILLIAM A. MCFARLAND, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that he was improperly prosecuted under the general false statement statute (18 U.S.C. 1001), rather than under 7 U.S.C. 1314(a), and that a government agent obtained a written statement from him in violation of his constitutional rights.

Following a jury trial in the United States District Court for the Middle District of North Carolina, petitioner was convicted of causing false entries to be made on an agricultural marketing card in connection with the sale of tobacco to the United States Department of Agriculture, in violation of 18 U.S.C. 1001. He was sentenced to 18 months' imprisonment. The court of appeals affirmed per curiam (Pet. App. 1a-3a; A. 14).[1]

---

[1] "A." refers to the joint appendix filed in the court of appeals.

The evidence at trial showed that petitioner owned a farm on which his tenants raised tobacco. Accordingly, the Agricultural Stabilization and Conservation Service issued petitioner market allotment cards for tobacco grown on his land. Petitioner, however, in exchange for a 20 cent per pound fee, permitted a tobacco warehouse to use his market allotment cards to sell tobacco grown elsewhere. False entries were made on the cards misidentifying various quantities of tobacco, and some of that tobacco was sold to the Department of Agriculture under the price stabilization program. Petitioner received $9,343.20 from the warehouse in return for this use of his cards (A. 62, 128-129, 141-143).

1. Without denying that his cards contained false entries, petitioner contends (Pet. 6-7) that he was improperly prosecuted under the general false statement statute (18 U.S.C. 1001). He claims that his conduct was governed solely by 7 U.S.C. 1314(a), which provides specific civil penalties for violations of the tobacco marketing quota system.

As the court of appeals correctly found (Pet. App. 1a-2a), this contention is squarely refuted by *United States* v. *Gilliland*, 312 U.S. 86 (1941). *Gilliland* involved a criminal prosecution under the predecessor of Section 1001 for falsifying reports that were required to be filed by regulations promulgated pursuant to the "Hot Oil" Act, which prohibited the interstate transportation of "contraband oil." In that case, this Court rejected the claim that the regulatory statute was intended to repeal the general false statement statute insofar as the latter applied to false statements relating to "hot oil" (*id.* at 95-96):

> There was no express repeal and there was no repugnancy in the subject matter of the two statutes which would justify an implication of repeal. The [predecessor of Section 1001], with its provision as to false and fraudulent papers, has its place as a fitting complement to the ["Hot Oil" Act] as well as to other statutes under

> which, in connection with the authorized action of governmental departments or agencies, the presentation of affidavits, documents, etc., is required.

This rationale controls the present case as well.[2] See also *United States* v. *Batchelder*, 442 U.S. 114 (1979).

2. Petitioner also contends (Pet. 7-8) that his inculpatory written statement should have been suppressed because it was obtained in violation of his constitutional rights. Specifically, he claims (Pet. 4-6) that the agent who took his statement questioned him in spite of his assertions that he did not understand his *Miranda* rights and that he was going to get an attorney, threatened him with long term imprisonment and heavy fines if he did not answer the questions, and told him that he was not the subject of the investigation and would be given favorable treatment if he cooperated. Petitioner further asserts that he signed the written statement (which, he suggests, was based on a hypothetical question posed by the agent) without reading it and only in order to satisfy the agent's demand for a handwriting exemplar.

This claim, however, is based solely upon a selective recitation of petitioner's own testimony at the suppression hearing. He fails to mention the directly contradictory testimony of the agent to whom he gave the statement. Nor does petitioner mention the portions of his own testimony that conflict with his present contention. Both the district court (Pet. App. 3a) and the court of appeals (Pet. App. 2a) found that petitioner had been fully advised of his *Miranda* rights and that his statement was made freely, voluntarily

---

[2]Petitioner asserts (Pet. 7) that he "is not arguing repeal by implication; rather, he is merely requesting the Court to determine the Congressional intent behind two overlapping statutes." The only relevant congressional intent, however, is whether Congress intended a partial repeal by implication.

and knowingly.[3] Accordingly, further review of this fact-bound question is unwarranted. See *United States* v. *Reliable Transfer Co.*, 421 U.S. 397, 401 n.2 (1975); *Berenyi* v. *Immigration Director,* 385 U.S. 630, 635 (1967).

In any event, the record fully supports the conclusion reached by both courts. The agent testified that he met petitioner in the local Agricultural Stabilization and Soil Conservation Office on August 31, 1977. After the agent read him a statement of his *Miranda* rights, petitioner stated that he understood his rights and that he would answer questions without the presence of counsel, but that he would not sign the waiver of rights form (A. 20-21, 25-26). According to the agent, petitioner gave no indication that he wished to leave (A. 41-42) or to consult an attorney (A. 56). At no time during the interview did the agent make any promises or threats to petitioner (A. 26). Specifically, the agent denied threatening petitioner with imprisonment and fines (A. 42-44, 57), promising help with the United States Attorney if petitioner cooperated in making a case against the warehouse (A. 47), or telling petitioner that he could not interfere with the investigation (A. 43).

The agent further testified that it was petitioner who brought up the hypothetical case and that petitioner thereafter admitted that the hypothetical was in fact what had happened (A. 57-59). The agent stated that after petitioner's statement was transcribed, petitioner read the typewritten statement before he signed it (A. 28). Petitioner himself acknowledged on cross-examination that the agent advised him of his rights (A. 83) and that he understood them (A. 92-93). Petitioner also stated that he was never told that he was under arrest and that he presumed that he would have

---

[3]The district court also found (Pet. App. 3a) that the questioning of petitioner was noncustodial.

been free to leave if he had desired to do so (A. 83, 90-91).[4] On this record, there was ample basis for the district court to determine that petitioner's statement was voluntarily and knowingly given. See *North Carolina* v. *Butler*, 441 U.S. 369, 373-375 (1979); *Lego* v. *Twomey*, 404 U.S. 477, 489 (1972).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

MARCH 1981

---

[4]The agent testified that petitioner was not under arrest and was not told that he was under arrest, and that his movements were in no way restricted (A. 21-22).